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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/683,826	10/10/2003	Philip E. Alei	ALEIP-001A	2983

7590 11/10/2005

Kit M. Stetina, Esq.  
STETINA BRUNDA GARRED & BRUCKER  
Suite 250  
75 Enterprise  
Aliso Viejo, CA 92656

EXAMINER
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KAUFMAN, JOSEPH A

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 11/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

72m

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/683,826		ALEI, PHILIP E.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Joseph A. Kaufman		3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.  
     4a) Of the above claim(s) 21 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-9 and 14-20 is/are allowed.
- 6) ☒ Claim(s) 10-13 and 22-24 is/are rejected.
- 7) ☒ Claim(s) 25 and 26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1/9/04</u> .  | 6) <input type="checkbox"/> Other: ____.                                    |

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-20 and 22-26, drawn to the dispensing device, classified in class 222, subclass 153.06.
  - II. Claim 21, drawn to process of making the dispenser, classified in class 264.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions of Group II and Group I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the base can be made by welding parts together.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Kit Stetina on November 3, 2005 a provisional election was made without traverse to prosecute the invention of Group 1, claims 1-20 and 22-26. Affirmation of this election must be made by applicant in replying to this Office action. Claim 21 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Specification***

5. The disclosure is objected to because of the following informalities: on page 8, paragraph 39, line 3, line 12-12 is shown in Figure 11, not 9.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

6. Claims 10-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 10-13, numerous occurrences, the term “may” renders the claims indefinite as it is unclear if the claims are required to have the functions that follow “may”.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Wagner.

Wagner shows a base 10; collar 27; enclosure portion 13; spout 12; core in 13; gas passageway 21; inlet orifice 22; pipe sections seen in Figure 5; exit orifice at the other end of the pipe from the inlet; and rib 19.

***Allowable Subject Matter***

9. Claims 1-9 and 14-20 are allowed.
10. Claims 25 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
11. Claims 10-13 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.


***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Clark and Raboin show vented closures; Makowski shows a push-pull cap; and Wrigley shows a hermetically sealed chamber.
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph A. Kaufman whose telephone number is (571) 272-4928. The examiner can normally be reached on Monday-Thursday, 5:30AM-2PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3754

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Joseph A. Kaufman  
Primary Examiner  
Art Unit 3754  
11/7/05

jak  
November 7, 2005